SINGAPORE REPORTS

YAW KEE v. TAN CHEE YIM & ANOR.

[C.A. (Wee Chong Jin C.J., Chua and Winslow J.J.) May 23, 1975]

[Singapore — Civil Appeal No. 16 of 1974]

Tort — Negligence — Contributory negligence — Whether deceased was contributorily negligent.

In this case the facts were that a lorry-cum-trailer driven by the second respondent along Anson Road in the direction of Robinson Road had entered its junction with Maxwell Road when the traffic lights were in its favour. The appellant was driving a motor car and the deceased was riding a motor cycle. The deceased and the appellant drove their respective vehicles along Maxwell Road from the direction of Shenton Way. The deceased jerked to a stop about 3 feet from the offside of the lorry, inside the junction but the appellant's car which was travelling on the offside of the deceased's motor cycle and to its rear entered the junction without stopping and collided with the tow bar of the lorry. This resulted in the car spinning to its right as it was dragged forward by the lorry and thereby colliding with the deceased's motor cycle. The trial judge found that the appellant was solely negligent for the accident. On appeal it was argued that the deceased was contributorily negligent.

Held, dismissing the appeal: (1) the act of the deceased in entering the junction and stopping as he did was not the kind of prior act of negligence which would entitle the appellant who was the party secondly negligent to say that his act was so mixed up with the state of things brought by the first act that he is entitled to invoke it as part of the cause of his colliding with the lorry so as to make it a case of contribution on the part of the deceased with whom he subsequently collided. There was no act of negligence on the part of the deceased which caused the appellant to be secondly negligent;

(2) the real, substantial and effective cause of the death of the deceased was the appellant's sole negligence in hitting the lorry with his car which spun to its right and killed the deceased, a fact which the deceased could not reasonably have forseen.

Cases referred to:-

(1) *Radburn* v. *Kemp* [1971] 1 W.L.R. 1502.
(2) *Nance* v. *British Columbia Electric Railway Co. Ltd.* [1951] 2 All E.R. 448.
(3) *Davies* v. *Swan Motor Co. (Swansea) Ltd.* [1949] 2 K.B. 291.
(4) *Sigurdson* v. *British Columbia Electric Railway Co. Ltd.* [1953] A.C. 291.
(5) *Jones* v. *Livox Quarries Ltd.* [1952] 2 Q.B. 608.
(6) *The Margaret* (1881) 6 A.C. 76.
(7) *S.S. Volute* [1922] 1 A.C. 129.
(8) *Stapley* v. *Gypsum Mines Ltd.* [1953] A.C. 681.
(9) *Caswell* v. *Powell Duffryn Associated Collieries Ltd.* [1940] A.C. 164.

COURT OF APPEAL.

Robert Yap Tyou Min for the appellant.

M. A. Valibhoy for the respondents.

Winslow J. (delivering the judgment of the Court): The sole question arising for determination on this appeal is whether the deceased motor-cyclist, whose estate is represented by the first respondents, was guilty of contributory negligence on the facts found by the trial judge and accepted by counsel for the appellant. A lorry-cum-trailer driven by the second respondent along Anson Road in the direction of Robinson Road entered its junction with Maxwell Road when the traffic lights were in its favour. The appellant was driving a motor car. The deceased and the appellant drove their respective vehicles along Maxwell Road from the direction of Shenton Way. The deceased jerked to a stop about 3 feet away from the off-side of the lorry, inside the junction but the appellant's car which was travelling on the off-side of the deceased's motor-cycle and to its rear entered the junction without stopping and collided with the towbar of the lorry. This resulted in the car spinning to its right as it was dragged forward by the lorry and thereby colliding with the deceased's motor-cycle.

The motor-cyclist died as a consequence of the appellant's undoubted negligence as found by the trial judge which is not disputed before us. The sole contention of counsel for the appellant is that, notwithstanding the negligence of the appellant in driving into the junction when it was unsafe to do so and thereby colliding with the lorry-cum-trailer and the deceased motor-cyclist whose death he caused by negligence, the deceased also caused or contributed to his own injury and was part author of his own misfortune.

On the principle emerging from *Radburn* v. *Kemp*[1] it is clear that the deceased motor-cyclist and the appellant who was driving his car on a parallel course to that taken by the deceased into the junction were both negligent in entering that junction at a time when the lorry was already well inside that junction and right across their paths. *Radburn's* case establishes that even if at that stage the lights in Maxwell Road had changed to green in favour of the deceased and the appellant when they entered the junction it would nevertheless have been negligent on their part to proceed into the junction in the prevailing circumstances. As Edmund Davies L.J. in *Radburn's* case described the position of persons like the deceased and the appellant,

> "the defendant driver had no business, despite the lights being in its favour, to enter the junction at all unless he was satisfied that it was safe for him to do so, and, once he had entered it, no right to proceed further across the junction without taking the utmost care to save harmless people who rightly were already on the junction before he entered it."

They would both undoubtedly have been negligent had the lights been then against them as they more probably were. The deceased motor-cyclist however jerked to a stop about three feet short of the lorry whereas the appellant who had been pursuing a parallel course to that taken by the deceased but on the deceased's right and slightly to his rear proceeded into the junction and failed to avoid the lorry-cum-trailer with whose towbar an impact took place resulting in his spinning round to his right and being dragged along in circumstances which caused his car to collide with the deceased motor-cyclist who was then in a stationary position sandwiched between the appellant's car and the trailer at almost the same time as or immediately after he, the appellant, came into collision with the lorry-cum-trailer.

The important question which arises for determination, as urged upon us by counsel for the appellant, is whether by placing himself in that position three feet short of the off-side of the lorry-cum-trailer as it was crossing the paths taken by both the deceased and the appellant, the deceased was guilty of contributory negligence. It is not in dispute that the lorry driver was not guilty of any negligence at all as found by the trial judge.

Contributory negligence when set up as a defence does not depend on any duty owed by the injured party to the party sued and all that is necessary to establish such a defence is for the appellant to prove that the deceased did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury (see *Nance* v. *British Columbia Electric Railway Co. Ltd.*[2] per Viscount Simon at 450).

After referring to the full analysis of the legal concepts involved by the English Court of Appeal in *Davies* v. *Swan Motor Co. (Swansea) Ltd.*[3] Viscount Simon continued,

"This, however, is not to say that in all cases the plaintiff who is guilty of contributory negligence owes to the defendant no duty to act carefully. Indeed, it would appear to their Lordships that in cases relating to running-down accidents like the present such a duty exists. The proposition can be put even more broadly. Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle."

A plea that the deceased was guilty of contributory negligence is wide enough to cover the contention that he was careless of his own safety, even though he may not have owed a duty to the appellant to be careful.

Viscount Simon referred to the fact that it is, perhaps, unfortunate that the phrase, "contributory negligence" uses the word "negligence" in a sense somewhat different from that which the latter word would bear when negligence is the cause of action and observed that in the Law Reform (Contributory Negligence) Act, 1945, of the United Kingdom Parliament (which is similar to our corresponding Act in Singapore), the contrast between the two meanings is recognised. That Act provides for a sharing of responsibility for damage where a person suffers damage as a result partly of his own fault and partly of the fault of any other person or persons, and "fault" is defined as being —

"... negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Act, give rise to the defence of contributory negligence."

Such a plea, *i.e.*, a plea of contributory negligence, should be treated as setting up want of care by the plaintiff for his own safety, whether in the circumstances of the accident the plaintiff owed a duty to the defendant or not.

In the circumstances of *Nance's* case the Privy Council restored the decision of the original trial judge to the effect that the street car driven by a motorman of the respondent company was solely negligent for ramming into and killing the deceased, who was then crossing the road on slippery ice at sometime between 11.00 p.m. and midnight, the evidence being that the street car had stopped some 75 feet away to pick up passengers and then re-started without warning and knocked down and killed the deceased as he was crossing the road.

We cite *Nance's* case not because of its particular facts or the findings thereon but for the principles enunciated which arise for consideration when contributory negligence is set up as a defence which it is for the defendant to prove.

Not long afterwards in 1953 another case involving British Columbia Electric Railway Co. Ltd. arose *i.e.* the case of *Sigurdson* v. *British Columbia Electric Railway Co., Ltd.*[4] where one *Sigurdson* who wanted to drive from one side of the street to the other, after beginning to turn, stopped on a street car track in the centre of the road. The driver of the street car had an unobstructed view, but did not see *Sigurdson* until he was 75 feet away, so that there was a collision. The jury found the driver of the street car was negligent in not keeping a proper lookout and that *Sigurdson* was not negligent. This decision, after being reversed on appeal, was upheld by the Judicial Committee of the Privy Council.

Inter alia, the trial judge directed the jury to consider whether *Sigurdson* was also guilty of some negligence which contributed to the accident as alleged by the company *i.e.* "that he was the author of his own injury knowing that the street car was coming along there and driving in front of it contrary to the by-law and other regulations; in crossing the street aside altogether from the question of the regulations and taking chances of crossing there under the circumstances". In the result the jury found that *Sigurdson* was not guilty of negligence which contributed to the accident. The Privy Council, per Lord Tucker, held that:

"the jury were entitled to come to the conclusion, taking a broad view of the case as a whole, that the negligence of the motorman was in the circumstances the sole cause of the accident irrespective of the precise moment at which he became aware of the danger."

In his comment on this case in the *Cambridge Law Journal* for 1954 at page 45, Professor C. J. Hamson, says,

"... not only is the 'principal' in *Davies* v. *Mann* good law but a recital of that celebrated donkey's misfortune is still effective actually to fix upon one wrongdoer sole responsibility for an accident to the occurrence of which the other party's misbehaviour was relevant.

It is satisfactory to note that in *Sigurdson's* case we have been spared any observations upon the question whether the plaintiff's negligence was continuing or not. In spite of some apparent authority to the contrary — which was recently given further currency in the opinions of the House in the *Boy Andrew Case* [1948] A.C. 140 — it should be self-evident that, at any rate in the normal collision case, the plaintiff's negligence, if relevant at all to the occurrence of the accident, necessarily continues up to the moment of the accident. Sigurdson necessarily continued to be at fault whilst he continued to lie wrongfully astraddle the track, just as much as the owner of the donkey continued to be in breach of his duty so long as it remained hobbled in the highway. The interest of *Sigurdson's* case, as much as of *Davies* v. *Mann*, lies precisely in the fact that despite the continuance of the plaintiff's negligence up to the moment of impact the defendant is held solely responsible for the collision."

We need not be overly concerned with the facts of *Sigurdson's* case because the battle there was entirely between two parties to an accident, only one of whom was found to be solely to blame because his act was held to be the effective cause of the injury caused to the other in that accident.

In the present appeal, we are dealing with facts which, not only show that a collision took place between the appellant's car and the lorry-cum-trailer for which responsibility lay solely at the door of the ap-

pellant, but also show that, as a result of that collision, injury was caused almost immediately afterwards by the appellant to the deceased who was then stationary to his left inside that junction. The deceased may have been negligent in entering the junction when it was palpably unsafe to do so and most probably against the traffic lights but so was the appellant whose own version that he stopped in Maxwell Road until his lights turned green, that the lorry had not yet reached its own stop-line and that he then did not see the deceased, was rejected by the trial judge. On the facts accepted at the trial the appellant shot past the deceased into the lorry on a more or less parallel course and it certainly seems most unlikely that any duty of care was owed to the appellant by the deceased particularly as there is no evidence that he was aware of the presence of the appellant behind him — in fact, the appellant denied seeing him or his motor-cycle there at all.

The sole question on contributory negligence which remains for consideration therefore is whether the deceased failed in his own interest to take reasonable care of himself and thereby contributed to his own injury even if he did not cause or contribute in any way to the collision between the lorry and the appellant's car.

Cases like *Nance, Sigurdson* and *Radburn* are cases of direct collisions between two parties. The defendant in each case was held solely negligent and the plaintiff not guilty of any contributory negligence.

In *Nance's* case, the plaintiff was a pedestrian. In *Sigurdson's* case, the plaintiff was driving a car. The defendants in both cases were owners of street cars driven by their motor-men. In *Radburn's* case, the plaintiff was a pedal-cyclist and the defendant drove a motor car.

No third party was injured in the collisions which took place in each case.

These cases only decided the issue of contributory negligence arising for consideration on the particular set of facts established in each case.

We are not, in this appeal, concerned with a collision between two vehicles or two parties only. So far as the collision between the lorry-cum-trailer and the appellant's car is concerned sole negligence for that collision lay with the appellant. As a result of that collision the appellant's car spun to its right and collided with the motor-cyclist who died as a consequence of the appellant's negligence. The question is whether fault as defined under section 2 of our Contributory Negligence and Personal Injuries Act (Cap. 31) lay partly with the motor-cyclist so as to render the damages payable to his dependants in respect of that negligence liable to be apportioned in such a way as to reflect the deceased's share (if any) of the responsibility for the injury to himself under that Act.

We have also considered the cases of *Davies* v. *Swan Motor Co. (Swansea) Ltd.* and *Jones* v. *Livox Quarries Ltd.*[5]

In each of these two cases the question whether a third person who was injured as a result of a collision between two vehicles was guilty of contributory negligence was considered by the English Court of Appeal.

In the case of *Davies* both the driver of a dust lorry and an overtaking omnibus driver were held negligent for a collision between their respective vehicles in the proportions of one to two. The question was whether the dustman who, contrary to instructions and regulations, was standing on the steps attached to the off-side of the lorry contributed to the injury to himself by so doing when the collision between the vehicles occurred. Bucknill L.J. at page 312 said, "it seems to me that it is impossible to say that the dangerous position of the deceased man on the lorry had ceased to be a factor contributing to the damage that he suffered" and answered the question "Did the negligence of the deceased (dustman) right up to the moment of collision . . . contribute to his injuries?" in the affirmative and reduced the damages to the plaintiff by one-fifth. Evershed L.J. agreed after saying that the question was most difficult of solution. Denning L.J. who gave the third judgment at page 326 said —

". . . the first question is: What were the faults which caused the damage? The collision between the two vehicles was caused by the negligence of the two drivers: the omnibus driver because he attempted to overtake in a narrow lane on a bend, without warning and before receiving a signal; the dust lorry driver because he turned suddenly across the road without making proper use of his mirror and without giving sufficient warning of his intention to do so. But although those negligent acts were the cause of the collision, what was the cause of the damage to the deceased man? He was, as the judge found, in a position which he must have known was a very dangerous position, in defiance of the dictates of common sense. If he had not been in that position, he would not have been injured. His position was certainly one of the causes of the damage, just as in *The Margaret* the improper position of the anchor was one of the causes of the damage to the barge."

It should be observed that *The Margaret*[6] was a case of a direct collision between a barge which was being negligently navigated and a (stationary) schooner which was moored to a mooring buoy in the river Thames. The schooner's anchor was hanging over its bow with the stock above water contrary to bye-laws for the navigation of the river Thames. The position of the anchor caused it to make a hole in the barge and its cargo was damaged. The damage was divided equally between the parties because both were to blame.

That was a case which, as Viscount Birkenhead said in *S.S. Volute,*[7] belongs to the class of cases where: —

"two acts (of negligence) come so closely together, and the second act of negligence is *so much mixed up with the state of things brought about by the first act,* that the party secondly negligent, might invoke the prior negligence as being part of the cause of the collision so as to make it a case of contribution."

Was the act of negligence of the deceased in entering the junction and stopping as he did to avoid the lorry a prior act of negligence which entitles the party secondly negligent (the appellant) to say that his act of negligence was so much mixed up with the state of things brought about by that prior negligence that he is entitled to invoke it as being part of the cause of his collision with the deceased so as to make it a case of contribution so far as injury to the deceased is concerned?

In the case of *Jones,* the plaintiff, who rode upon the towbar at the back of a traxcavator, knowing that such conduct was dangerous and was forbidden by his employers, was held to be guilty of contributory negli-

gence in so doing when he was crushed between the traxcavator and a dumper which negligently ran into him from the back as he stood on the towbar.

The danger of applying to the facts in the appeal before us pronouncements by the learned Lord Justices in that case is the danger that when considered out of the context of the particular facts of that case such pronouncements may seem to lend support to a finding that the deceased was guilty of contributory negligence. Singleton L.J., for example, held that Jones "put himself in a dangerous position which, in fact, exposed him to *the particular danger which came upon him.* He ought not to have been there ... If he unreasonably or improperly, exposed himself *to this particular risk,* I do not think that he ought to be allowed to say that it was not a cause operating to produce the damage." Singleton L.J.'s "first impression was that the fact that the plaintiff was upon the traxcavator had nothing to do with the accident. I think the real cause was the negligence of the driver of the dumper" but a little later said,

"Still, when one has to consider the question of contributory negligence, I do not see that it can be said that the judge was wrong in finding that the plaintiff, who deliberately put himself into a position which exposed him to this danger, was to some extent responsible for that which happened; in other words, I do not think it would be right for this court on these findings to say that the judge was wrong in law;"

When one considers that in the *Davies* and *Jones* cases there was an injured person who had been forbidden to stand on the steps of the lorry in the former case and on the towbar at the back of the traxcavator in the latter case, one gets a somewhat different picture from that which emerges from the facts before us.

The similarity between the position of the deceased in this appeal and the positions of *Davies* and *Jones* lies in the fact that like the defendant in *Radburn's* case he had placed himself in a dangerous position inside the junction when it was unsafe to do so (and therefore negligent). He was not however caught in the kind of collision which took place first between two vehicles as *Davies* and *Jones* were. In the cases of *Davies* and *Jones* neither *Davies* nor *Jones* caused or contributed to the actual collisions between vehicles which took place in those cases because of their presence there. In the case of the deceased motor-cyclist, similarly his presence at the scene did not cause or contribute to the collision between the lorry and the appellant's car. The conduct of each of the three was accordingly such that it was not a cause operating to produce each of these collisions, however dangerous their positions might have been.

The question is whether the deceased, whilst stationary about three feet short of the lorry ought reasonably to have foreseen that some motorist to his right and to his rear would act as he himself had earlier done in driving into the junction when it was unsafe to do so, collide with the lorry, spin round to his right and cause him, the deceased, to suffer harm?

As Denning L.J. said in the *Jones* case at page 615 —

"A person is guilty of contributory negligence if he ought reasonably to have foreseen that, if he did not act as a reasonable, prudent man, he might be hurt himself; and in his reckonings he must take into account the possibility of others being careless."

Does this mean, if one accepts this proposition, that the question we should ask ourselves is whether the deceased motor-cyclist in entering the junction negligently ought to have foreseen that he might be hurt not only by a vehicle he could see moving lawfully inside the junction like the lorry and to take into account the possibility of carelessness on the part of such a vehicle or should we ask ourselves whether he ought to have foreseen harm to himself from vehicles generally, whether he could see them or not, which might lawfully or unlawfully enter that junction from any quarter?

It would appear that the proposition is worded in sufficiently wide terms to include the possibility of vehicles charging into the traxcavator from behind it such as the dumper in question of whose presence there is no evidence that *Jones* was ever previously aware.

If so, should we go further and ask ourselves whether the deceased ought to have foreseen possible harm to himself from the appellant's car which overtook him on his right (even though he may not have seen it or been aware of its existence earlier) because it might hit the lorry across their paths and spin round and knock him under that lorry?

This is a difficult question to answer but it requires to be answered "somewhat broadly and upon common sense principles as a jury would probably deal with it" (see per Viscount Birkenhead in *S.S. Volute*[7] at page 144).

If, to quote Denning L.J.'s illustration on causation, *Jones* had been hit in the eye by a negligent sportsman then that would be a part of the history and would not make the plaintiff's negligence in any way a cause of that injury. The learned judge was unable to say this on the facts of the case before him, holding that the negligence of *Jones* here "was so much mixed up with his injury that it cannot be dismissed as mere history. His dangerous position on the vehicle was one of the causes of his damage just as it was in *Davies* v. *Swan Motor Co. (Swansea) Ltd.*"

In *Stapley* v. *Gypsum Mines Ltd.*[8] Lord Reid said,

"To determine what caused an accident from the point of view of legal liability is a most difficult task. If there is any valid logical or scientific theory of causation it is quite irrelevant in this connection. In a court of law this question must be decided as a properly instructed and reasonable jury would decide it... The question must be determined by applying common sense to the facts of each particular case. One may find that as a matter of history several people have been at fault and that if any one of them had acted properly the accident would not have happened, but that does not mean that the accident must be regarded as having been caused by the faults of all of them. One must discriminate between those faults which must be discarded as being too remote and those which must not. Sometimes it is proper to discard at all but one and to regard that one as the sole cause, but in other cases it is proper to regard two or more as having jointly caused the accident. I doubt whether any test can be applied generally."

In the same case Lord Asquith at page 687 said,

"I am persuaded that it is still part of the law of this country that two causes may both be necessary pre-conditions

of a particular result — damage to X — yet the one may, if the facts justify that conclusion, be treated as the real, substantial, direct or effective cause, and the other dismissed as at best a *causa sine qua non* and ignored for purposes of legal liability. This is a doctrine affirmed by your Lordships' House, and not, in my view, displaced by the Law Reform (Contributory Negligence) Act, 1945."

It may be pertinent also to consider the following passage from Lord Atkin's judgment in *Caswell* v. *Powell Duffryn Associated Collieries, Ltd.*(9) at page 164,

"But the injury may be the result of two causes operating at the same time, a breach of duty by the defendant and the omission on the part of the plaintiff to use the ordinary care for the protection of himself or his property that is used by the ordinary reasonable man in those circumstances. In that case the plaintiff cannot recover because the injury is partly caused by what is imputed to him as his own default. On the other hand if the plaintiff were negligent but his negligence was not a cause operating to produce the damage there would be no defence. I find it impossible to divorce any theory of contributory negligence from the concept of causation. It is negligence which 'contributes to cause' the injury, a phrase which I take from the opinion of Lord Penzance in *Radley* v. *London and North Western Ry. Co.* And whether you ask whose negligence was responsible for the injury, or from whose negligence did the injury result, or adopt any other phrase you please, you must in the ultimate analysis be asking who 'caused' the injury; and you must not be deterred because the word 'cause' has in philosophy given rise to embarrassments which in this connection should not affect the judge."

In our view, the act of the deceased in entering the junction and stopping as he did was not the kind of prior act of negligence which entitles the appellant who was the party secondly negligent to say that his act was "so much mixed up with the state of things brought about by the first act" that he is entitled to invoke it as part of the cause of his colliding with the lorry so as to make it a case of contribution on the part of the deceased with whom he subsequently collided. The facts in the *S. S. Volute* case showed clear negligence on the part of both vessels in relation to each other. In the present appeal, there was no act of negligence on the part of the deceased which caused the appellant to be secondly negligent.

The cases of *Davies* and *Jones* relate to passengers who exposed themselves to particular risks which they could have reasonably foreseen when they took up their positions on their respective vehicles after being forbidden to do so and thereby contributed to their own injuries.

With regard to Denning L.J.'s proposition earlier cited from the *Jones* case we are of the view that the question we should ask ourselves and which we do is whether the deceased ought reasonably to have foreseen that he might be hurt not only by vehicles such as the lorry in particular which he could see lawfully moving inside the junction but also by vehicles unlawfully entering the junction like the appellant? We would answer this question in the negative.

As to the further question whether he ought reasonably have foreseen harm to himself from the appellant we are satisfied that the answer is again in the negative.

There is no evidence that the deceased was negligent in relation to the appellant so as to make that negligence a prior act which contributed to cause the injury he sustained. The second act of negligence on the part of the appellant was independent of the first act and was not brought about by it. The negligence of the deceased was in relation to vehicles like the lorry which had lawfully entered the junction, in the first place, which the appellant obviously had not.

Having jerked to a stop, there was practically no risk to which the deceased exposed himself as there was no other traffic lawfully moving in that junction besides the lorry. So far as the evidence shows and, as the trial judge found, all other traffic was at a standstill except for the appellant who entered the junction unlawfully after the deceased on a parallel course but to his right and to his rear. The deceased could not have reasonably anticipated the action of the appellant in overtaking him and hitting the towbar of the lorry. Nor could he have foreseen that the appellant's car would spin round and knock him under the trailer. Further, this was not a consequence in the chain of causation which he ought to have foreseen.

We appreciate that the position in which the deceased placed himself in that junction after entering it unlawfully may seem to be a potent factor showing want of care on his part towards lawful users of that junction. The appellant was not such a person. But it does not prove, as the appellant is obliged to do in this appeal, that the deceased did not in his own interest take reasonable care of himself.

After anxious consideration of the difficult questions arising out of the facts in this appeal we have arrived at the conclusion that the real, substantial and effective cause of the death of the deceased was the appellant's sole negligence in hitting the lorry with his car which spun to its right and killed him, a fact which the deceased could not reasonably have foreseen. In any event, the trial judge came to the conclusion that the appellant was solely to blame and that the deceased was not guilty of contributory negligence. Adopting the language of the Privy Council in *Sigurdson's* case the trial judge was entitled to come to that conclusion, taking a broad view of the case as a whole.

We would accordingly dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Battenberg & Talma; Murphy & Dunbar.*